

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JOSEPH A. BARKER, REGIONAL DIRECTOR
OF REGION 13 OF THE NATIONAL LABOR
RELATIONS BOARD, FOR AND ON BEHALF
OF THE NATIONAL LABOR RELATIONS
BOARD**

Petitioner

v.

REGAL HEALTH AND REHAB CENTER, INC.

Respondent

Civil No. 08CV2229

Judge Grady

Magistrate Judge Cole

**MOTION TO TRY PETITION FOR PRELIMINARY INJUNCTION
UNDER SECTION 10(J) OF THE NATIONAL LABOR RELATIONS ACT
ON BASIS OF THE ADMINISTRATIVE LAW JUDGE'S HEARING
TRANSCRIPT, TO FILE PETITIONER'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF PETITION, AND FOR ORAL
ARGUMENT**

Comes now Sylvia L. Taylor, as Counsel for Petitioner, who in requesting that the Court base its decision on the transcripts and exhibits of the administrative proceedings before an Administrative Law Judge of the National Labor Relations Board, accept Petitioner's Memorandum of Points and Authorities in Support of Petition for Injunction after receipt of the transcript of the administrative hearing, and to hear oral argument, hereby states as follows:

1. On April 18, 2008, Petitioner filed with this Court a Petition for Preliminary Injunctive Relief under Section 10(j) of the National Labor Relations Act, as amended (herein called the Act).

2. A hearing before an Administrative Law Judge of the National Labor Relations Board on the allegations of the complaint underlying the Petition for Preliminary Injunction is scheduled to commence on May 27, 2008, and anticipated to conclude on May 30, 2008. The parties will have the opportunity to submit all evidence relevant to the administrative proceeding on the merits of the underlying unfair labor practice allegations and to present and cross-examine witnesses. A full and complete transcript of these proceedings is anticipated to be received by Petitioner no later than June 10, 2008.

3. The District Court need not proceed to a full evidentiary hearing in this matter. Petitioner maintains that the Court may utilize the transcripts and exhibits of the administrative proceeding to evaluate the issue of the Petitioner's likelihood of success on the merits of the underlying proceeding before the National Labor Relations Board as set forth in *Kinney v. Pioneer Press*, 881 F.2d 485, 490 (7th Cir. 1993) and *NLRB v. Electro Voice, Incorporated*, 83 F.3d 1559, 1566 (7th Cir. 1996). However, since the administrative record may not contain all the evidence relating to the equitable criteria for injunctive relief, absent agreement of the parties and the administrative law judge to present evidence on the equitable factors during the administrative hearing, it may be necessary for the parties to present further evidence on these elements of the case. Therefore, Petitioner requests leave for the parties to present evidence on the equitable criteria for injunctive relief in the form of witness testimony and/or affidavit evidence, if necessary, as well as an opportunity to orally argue the overall merits of the petition for equitable relief before this Court.

WHEREFORE, Petitioner respectfully moves that this Court:

(1) Grant Petitioner's Motion to Try Petition for Injunction Under Section 10(j) of the National Labor Relations Act on Basis of the Administrative Law Judge's Hearing Transcript

and Exhibits for the purpose of evaluating the relative strength of the Petitioner's likelihood of success on the merits of the underlying proceeding before the National Labor Relations Board;

(2) File Petitioner's Memorandum of Points and Authorities in Support of Petition for Injunction Under Section 10(j) of the Act after receipt of the transcript of the administrative proceedings by this Court.

(3) Set hearing for "Just and Proper" evidence and oral argument on June 17, 2008, or as soon thereafter as a hearing may be scheduled on Petitioner's application for injunctive relief.

DATED at Chicago, Illinois this 25th day of April, 2008.

/s/ Sylvia L. Taylor, filed electronically
Sylvia L. Taylor

/s/ Jessica Willis Muth, filed electronically
Jessica Willis Muth
Counsels for Petitioner
National Labor Relations Board, Region 13
209 South LaSalle Street, Suite 900
Chicago, Illinois 60604
(312) 353-7617

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Motion to Try Petition for Preliminary Injunction Under Section 10(j) of the National Labor Relations Act on Basis of the Administrative Law Judge's Hearing Transcript, File Petitioner's Memorandum of Points and Authorities in Support of Petition and for Oral Argument, have, this 25th day of April, 2008, been served in the manner indicated upon the following parties of record:

Certified Mail

Gem Healthcare
Attn: Michael Lerner
3553 W. Peterson Ave. #101
Chicago, IL 60659

Peter Andjelkovich & Associates
Attn: Peter Andjelkovich
39 S. LaSalle, Suite 200
Chicago, IL 60603

Asher, Gittler, Greenfield, Cohen & D'Alba Ltd.
Attn: Margaret Angelucci
200 W. Jackson Street, Suite 1900
Chicago, IL 60606

/s/ Sylvia L. Taylor, filed electronically
Sylvia L. Taylor

/s/ Jessica Willis Muth, filed electronically
Jessica Willis Muth
Counsels for Petitioner
National Labor Relations Board, Region 13
209 South LaSalle Street, Suite 900
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Magistrate Judge Cole

**ORDER GRANTING PETITIONER'S MOTION TO TRY PETITION FOR
PRELIMINARY INJUNCTION UNDER SECTION 10(J) OF THE NATIONAL
LABOR RELATIONS ACT ON BASIS OF THE ADMINISTRATIVE LAW
JUDGE'S HEARING TRANSCRIPT, TO FILE PETITIONER'S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PETITION, AND FOR ORAL ARGUMENT**

IT IS HEREBY ORDERED that:

(1) Petitioner's Motion to Try Petition for Injunction Under Section 10(j) of the National Labor Relations Act on Basis of the Administrative Law Judge's Hearing Transcript and Exhibits for the purpose of evaluating the relative strength of Petitioner's likelihood of success on the merits of the underlying proceeding before the National Labor Relations Board is granted;

(2) Petitioner's request to file Petitioner's Memorandum of Points and Authorities in Support of Petition for Injunction Under Section 10(j) of the Act after receipt of the transcript of the administrative proceedings by this Court is granted;

(3) A hearing for "Just and Proper" evidence and oral argument will be set after receipt of the transcript of the administrative proceedings by this Court.

DATED at Chicago, Illinois this 30th day of April, 2008.

Honorable John F. Grady
United States District Court
Northern District of Illinois Eastern Division
219 South Dearborn, Room 2201
Chicago, Illinois 60604